

MICHIGAN ELECTION LAW (EXCERPT)

Act 116 of 1954

STATE CANVASSERS

168.878 Construction of sections; action against board of state canvassers by mandamus.

Sec. 878. Nothing in the following sections of this chapter contained shall be construed to repeal any action or remedy which may now exist by reference of any controversy to the courts, except that any proceeding intended to restrain, enjoin, modify, control or otherwise interfere with the action of the board of state canvassers, the board of county canvassers or any other representative of the board of state canvassers operating under the provisions of the following sections of this chapter, shall be instituted only against the board of state canvassers and by no other action than mandamus.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.879 Petition for recount; requirements; petition by state political party chairperson; recount and preservation of ballots; report; authority of legislature.

Sec. 879. (1) A candidate voted for at a primary or election for an office may petition for a recount of the votes if all of the following requirements are met:

(a) The office is an office for which the votes are canvassed by the board of state canvassers under section 841 or is the office of representative in Congress, state representative, or state senator for a district located wholly within 1 county.

(b) The petition alleges that the candidate is aggrieved on account of fraud or mistake in the canvass of the votes by the inspectors of election or the returns made by the inspectors, or by a board of county canvassers or the board of state canvassers. The petition shall contain specific allegations of wrongdoing only if evidence of that wrongdoing is available to the petitioner. If evidence of wrongdoing is not available, the petitioner is only required to allege fraud or a mistake in the petition without further specification.

(c) Except as otherwise provided in this subdivision, the petition for a recount is filed not later than 48 hours following the completion of the canvass of votes cast at an election. If the recount petition relates to a state senatorial or representative district located wholly within 1 county or to the district of a representative in Congress located wholly within 1 county, the petition for a recount shall be filed not later than 48 hours following the adjournment of the meeting of the board of state canvassers at which the certificate of determination for that office was recorded pursuant to section 841. However, for a special election for representative in Congress, state senator, or state representative for a district located wholly within 1 county, the petition for recount shall be filed not later than 48 hours after the certificate of determination is filed with the secretary of the board of state canvassers.

(d) The petition is presented to and filed with the secretary of state.

(e) The petition is written or printed and is signed and sworn to by the candidate.

(f) The petition sets forth as nearly as possible the nature and character of the fraud or mistakes alleged and the counties, cities, or townships and the precincts in which they exist.

(g) The petition specifies the counties, cities, townships, and precincts in which the recount is requested.

(h) If the office is the office of state representative, a copy of the petition is filed with the clerk of the house of representatives. If the office is the office of state senator, a copy of the petition shall be filed with the secretary of the senate.

(2) If a state senatorial race is determined by a vote differential of 500 votes or less or a state representative race is determined by a vote differential of 200 votes or less, the chairperson of a state political party may petition for a recount of the votes on behalf of a candidate in that race in the manner prescribed in subsection (1). Notwithstanding subsection (1)(b) and (f), the petition filed under this subsection need not allege fraud or mistake. Notwithstanding subsection (1)(e), the petition shall be signed by the chairperson of the state political party filing the petition under this subsection.

(3) The ballots in a precinct petitioned for recount in a legislative contest shall be recounted for that office by the board of state canvassers and shall be preserved until the contest is disposed of under the rules of the legislative body that takes office beginning in January following the contested general election. In legislative recounts of a special general election, ballots in a precinct petitioned for recount shall be preserved until the contest is disposed of under the rules of the legislative body serving at the time the report in subsection (4) is filed.

(4) Upon the completion of a recount for a legislative office, the board of state canvassers, in addition to the certification required by section 892, shall forward to the appropriate legislative body a report of the

results of the recount.

(5) This section does not limit the authority of the legislature under section 16 of article IV of the state constitution of 1963.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1973, Act 157, Imd. Eff. Dec. 6, 1973;—Am. 1980, Act 61, Imd. Eff. Apr. 1, 1980;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 1999, Act 216, Imd. Eff. Dec. 28, 1999.

Popular name: Election Code

168.879a Section 168.879 inapplicable to presidential primary election.

Sec. 879a. Section 879 does not apply to a presidential primary election.

History: Add. 1988, Act 275, Eff. Sept. 1, 1988.

Popular name: Election Code

168.880 Recount of votes; petition by elector on constitutional amendment or question, deadline, contents.

Sec. 880. Any elector in this state who believes that there has been fraud or error committed by the inspectors of election in the return made by said inspectors or of any county canvassing board in the canvass of votes cast upon the question of a proposed amendment to the constitution or any other question or proposition, the votes for which are canvassed by the board of state canvassers, may, not later than 2 days after final certification and determination by the board of state canvassers of the canvass of votes cast at an election, present to and file with the secretary of state a written or printed petition which shall be sworn to by the elector presenting the same and which shall set forth as nearly as may be the nature and character of the fraud or error of which the complaint is made and the counties, cities or townships or the precincts thereof in which it is believed that the fraud or error occurred, and such petition shall contain a prayer that a correction thereof be made by a recount of the votes cast therein.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.880a Recount of votes; grounds; notice to candidates; elections involving propositions procedures.

Sec. 880a. (1) A recount of all precincts in the state shall be conducted at any time a statewide primary or election shall be certified by the board of state canvassers as having been determined by a vote differential of 2,000 votes or less. This section shall not apply to partisan offices to which more than 1 person is to be elected.

(2) If the election is an election involving candidates, the board of state canvassers forthwith shall notify all candidates whose vote could be affected by the recount that a recount shall be conducted and of the time and place the board of state canvassers will meet to determine recount procedures.

(3) If the election involves a proposition, the board of state canvassers shall meet on the seventh day following certification at the office of the secretary of state for the purpose of determining procedures. Persons or groups interested in being authorized to have challengers and observers at the recount shall petition the board at that meeting to be considered interested parties for such purpose. The board at that meeting shall determine which persons or groups shall be considered interested parties for the recount of the proposition.

History: Add. 1969, Act 268, Eff. Mar. 20, 1970.

Popular name: Election Code

168.881 Recount petition; deposit; refund; disposition of sum deposited.

Sec. 881. (1) A person filing a recount petition pursuant to section 879 or 880 shall file the petition with the state bureau of elections. Except as otherwise provided in this section, at the time of filing the petition, the petitioner shall deposit the sum of \$25.00 for each precinct in which a recount of the votes is demanded in cash or by check or other negotiable instrument made payable to the state of Michigan.

(2) If 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate and the petitioner is more than 50 votes or 0.5% of the total number of votes cast in the race, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$125.00 for each precinct referred to in his or her petition. For purposes of this subsection, the winning candidate in a primary for a nonpartisan office where only 1 candidate will be elected means the candidate nominated with the lesser number of votes.

(3) If more than 1 candidate is to be elected to the office and the official canvass of votes shows that the number of votes separating the winning candidate who received the least number of votes and the petitioner is more than 50 votes or 0.5% of the sum of the number of votes received by the 2 candidates, whichever is

greater, the petitioner shall deposit with the state bureau of elections the sum of \$125.00 for each precinct referred to in his or her petition.

(4) If the vote is on a proposal and the official canvass of votes shows that the number of votes separating the "yes" votes and the "no" votes is more than 50 votes or 0.5% of the total number of votes cast on the proposal, whichever is greater, the petitioner shall deposit with the state bureau of elections the sum of \$125.00 for each precinct referred to in his or her petition.

(5) If, by reason of the recount, the petitioner establishes fraud or mistake as set forth in his or her petition and receives a certificate of election or establishes sufficient fraud or mistake to change the result upon an amendment or proposition, the votes for and against which were recounted, the state bureau of elections shall refund the money deposited to the petitioner. The secretary of state shall refund the money deposited to a petitioner who is a chairperson of a state political party if the results of the race for which a recount was petitioned for under section 879 are changed. If a refund is not made as required by this section, then the secretary of state shall pay to the treasurer of each county its proportionate share of the deposit based upon the number of precincts in the county in which the votes were recounted.

(6) If a precinct referred to in the petition is determined "not recountable" as provided in section 871(3) or, subject to subsection (7), if a precinct referred to in the petition is not recounted due to the withdrawal of the petition, the money deposited for the recount of that precinct shall be refunded to the petitioner.

(7) If the votes cast on the ballots voted in a precinct have been examined and recounted, the withdrawal of the petition shall not result in a refund of the money deposited for the recount of that precinct.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1980, Act 200, Imd. Eff. July 18, 1980;—Am. 1995, Act 261, Eff. Mar. 28, 1996;—Am. 2014, Act 406, Imd. Eff. Dec. 30, 2014.

Popular name: Election Code

168.882 Notice of recount petition; filing counter petition; refund of deposit money; filing objections to recount petition; notice; hearing; ruling.

Sec. 882. (1) If a candidate has filed a recount petition and paid the deposit under sections 879 and 881, the secretary of state shall give notice of the recount petition to each opposing candidate within 48 hours after the filing of the petition by delivering to each candidate a copy of the recount petition, or, if the candidate cannot be found, by leaving a copy at the candidate's last known place of residence with a member of the candidate's immediate family of suitable age. If a member of the candidate's family cannot be found, the secretary of state may give notice by posting the recount petition in a conspicuous place at the candidate's last known place of residence.

(2) A candidate may file a counter petition in the same manner as the original petition under section 881 not later than 4 p.m. of the seventh day after the original recount petition has been filed with the secretary of state. At the time of filing the counter petition, the counter petitioner shall deposit the sum of money as required in section 881 for the original petitioner. The secretary of state shall refund to the counter petitioner the money deposited by the counter petitioner if the original petitioner does not establish fraud or receive a certificate of election.

(3) On or before 4 p.m. of the seventh day after a recount petition has been filed under section 881, an opposing candidate may file objections to the recount petition with the board of state canvassers. The opposing candidate shall set forth his or her objections to the recount petition in writing. Upon receipt of an objection under this subsection, the board of state canvassers shall notify the petitioner and the objecting candidate of the date of the hearing of the board of state canvassers to consider the objections. The board of state canvassers shall allow the recount petitioner and the objecting candidate to present oral or written, or both, arguments on the objections raised to the recount petition at the hearing. Not later than 5 business days following the hearing, the board of state canvassers shall rule on the objections raised to the recount petition. The board of state canvassers shall not begin a recount unless 2 or more business days have elapsed since the board ruled on the objections under this subsection, if applicable.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1955, Act 271, Imd. Eff. June 30, 1955;—Am. 1969, Act 188, Imd. Eff. Aug. 5, 1969;—Am. 1980, Act 61, Imd. Eff. Apr. 1, 1980;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

168.883 Recount petition; notice to county clerk; preservation of ballots; investigation and recount by state canvassers.

Sec. 883. The secretary of state, upon receipt of any such petition for recount, shall immediately notify the county clerk of each county in which are located any precincts included in such petition for recount that a petition for such recount by the board of state canvassers has been filed and the ballots for such precincts shall be carefully preserved. Ballots and boxes shall remain in the possession of city or township clerks until

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requisitioned by the canvass board. The board of state canvassers, at as early a date as possible after the receipt of such petition and the deposit required, shall investigate the facts set forth in said petition and cause a recount of the votes cast in the several precincts included in the petition.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.884 Boards of county canvassers; clerks and assistants for conduct of recount.

Sec. 884. The boards of county canvassers shall employ such assistants and clerks as shall be deemed necessary for the conduct of any such recount.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.885 Boards of state and county canvassers; right to subpoena witnesses; noncompliance, penalty.

Sec. 885. The board of state canvassers or any member or representative thereof and the county boards of canvassers shall each have the right to subpoena any inspector of election, county officer or other person to appear before it or him for any purpose as may be desired in connection with the matter of such recount. Whoever being so subpoenaed shall fail to obey same shall be deemed guilty of a misdemeanor.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.886 Witnesses; compensation and mileage.

Sec. 886. The persons who are subpoenaed to appear as herein required shall receive the same compensation and mileage therefor as is prescribed by law for witnesses in the circuit courts of this state.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.887 Recount of votes; misconduct of employees, felony.

Sec. 887. Any officer, assistant, clerk or employee engaged in the conduct of a recount who shall wilfully commit any act which shall interfere with a fair and impartial recount of the votes cast for a contested office, amendment or proposition shall be deemed guilty of a felony and subject to penalties thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.888 Board of state canvassers; return of ballot boxes, poll books, tally sheets, and statements of votes; concurrent recount.

Sec. 888. The board of state canvassers shall have the right and authority to demand and cause the ballot boxes, poll books, tally sheets, the statement of votes returned in connection with any such election, and such other documents and reports as may be deemed necessary, to be brought before the several boards of county canvassers, and shall order that a concurrent recount of the votes upon any office or proposition petitioned for under the provisions of sections 861 et seq. hereof, where such votes appear upon the same ballots as those which are to be recounted by the board of state canvassers, be conducted, which concurrent recount shall be under the exclusive jurisdiction and control of the said board of state canvassers. All ballots, poll lists, tally sheets, returns and reports shall be safely guarded and when no longer required shall be delivered to the officials charged with the custody thereof.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.889 Board of state canvassers; time and place, rules and regulations for recounts in counties.

Sec. 889. All recounts provided for in sections 878 et seq. of this act shall be conducted in the several counties wherein the votes to be counted were cast by the respective boards of county canvassers in each of the several counties, subject to the direction, supervision and control of the said board of state canvassers. The said board of state canvassers shall prescribe the time and the place in each county where the recount of any votes shall be conducted, which recount shall be in public. Said board shall provide each board of county canvassers with such rules and regulations as in the opinion of the said board of state canvassers shall be necessary to conduct such recount in a fair, impartial and uniform manner in the said several counties. Observance of such rules and regulations shall be enforced by said board or its representatives hereinafter

provided for.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

Administrative rules: R 168.901 et seq. of the Michigan Administrative Code.

168.890 Board of state canvassers; authority of members as to supervision of recounts in counties.

Sec. 890. It is not necessary for all of the members of the board of state canvassers to be present in order to direct, supervise, or control the recount in a county. A member of the board of state canvassers or state officer, state employee or member of the board of county canvassers may direct, supervise, and control the recount if designated by the board of state canvassers, so that fairness, impartiality, and uniformity in the conduct of the recount may be obtained and the result of the election determined at the earliest possible moment. A member of the board of state canvassers or other representative designated by the board of state canvassers under this subsection has the same authority as the board of state canvassers to enforce and carry out the rules and regulations provided for the recount by the board.

History: 1954, Act 116, Eff. June 1, 1955;—Am. 1995, Act 261, Eff. Mar. 28, 1996.

Popular name: Election Code

Administrative rules: R 168.901 et seq. of the Michigan Administrative Code.

168.891 Recounts; manner of conduct under board of state canvassers.

Sec. 891. Any recount conducted under the direction, supervision and control of the state board of canvassers, unless otherwise herein provided, shall be conducted in the same manner as is provided in sections 861 et seq. for the conduct of recounts by county boards of canvassers, so far as the provisions thereof are applicable.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.892 Board of state canvassers; recounts in counties, certification of results.

Sec. 892. Whenever a recount in any county shall be completed, it shall be the duty of the county boards of canvassers to return forthwith the results of such recount to the board of state canvassers, which board shall compile said returns and certify the result. The returns made by the said boards of county canvassers of any recount shall be deemed to be correct, anything in the previous return of any board of election inspectors or any county canvassing board to the contrary notwithstanding. The final report on the results of any recount shall be open to public inspection immediately following its certification by the board of canvassers.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.893 Discontinuance of recount; original return deemed correct.

Sec. 893. If the person petitioning for such recount shall withdraw his petition or discontinue the recount before the completion thereof, then in such event the original return shall be deemed to be correct regardless of any change shown by the recount at the time of the withdrawal of the petition or the discontinuance of such recount.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code

168.894 Recounts in counties; expenses, payment.

Sec. 894. All expenses incurred in the conduct of the recount of such votes in any county shall be paid by the county. All expenses in connection with the direction, supervision and control of such recount by the board of state canvassers shall be paid from the general fund of the state on vouchers to be approved and audited by the state board of canvassers.

History: 1954, Act 116, Eff. June 1, 1955.

Popular name: Election Code